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DEPARTMENT OF EDUCATION

34 CFR Parts 86 and 668

Waiver of Certain Consumer Information Requirements for
Foreign Institutions of Higher Education

AGENCY: Office of Postsecondary Education, Department of
Education.

ACTION: Waiver.

SUMMARY: The Secretary identifies specific provisions
governing the student loan programs authorized by title IV
of the Higher Education Act of 1965, as amended (HEA), that
do not apply to foreign institutions.

DATES: [insert date of publication in the Federal
Register].

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SUPPLEMENTARY INFORMATION: The Department of Education's
(Department) regulations governing the eligibility of
foreign institutions to participate in the title IV, HEA
student loan programs provide that, "[a] foreign
institution must comply with all requirements for eligible
and participating institutions except when made

inapplicable by the HEA or when the Secretary, through publication in the *Federal Register*, identifies specific provisions as inapplicable to foreign institutions.” 34 CFR 600.51(c)(1). In this document, we identify specific provisions that do not apply to foreign institutions of higher education.

I. REGULATORY CONSUMER INFORMATION REQUIREMENTS

INAPPLICABLE TO FOREIGN INSTITUTIONS OF HIGHER EDUCATION

Transfer of Credit Policies and Articulation Agreements (34 CFR 668.43(a)(11))

Requirement: Each institution must disclose and make available to prospective and enrolled students a statement of the school’s transfer of credit policies that includes, at a minimum--

- Any established criteria the school uses regarding the transfer of credit earned at another school; and
- A list of schools with which the school has established an articulation agreement.

Reason: The Secretary believes this requirement is inapplicable to foreign institutions because American students attending a foreign institution are unlikely to need this information. Transfer of credit rules at foreign institutions generally apply to credits earned at

institutions in the institution's home country and are of limited use to American students seeking to transfer credits earned at U.S. institutions.

Copyright Infringement Policies and Sanctions, Including Computer Use and File Sharing (34 CFR 668.43(a)(10))

Requirement: Institutions must readily make available to current and prospective students the institution's policies and sanctions related to copyright infringement, including-

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- A statement that explicitly informs students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject them to civil and criminal liabilities;
- A summary of the penalties for violation of Federal copyright laws; and
- The institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system.

Reason: U.S. copyright laws do not apply in foreign countries and the rules and penalties mentioned in this

provision would not apply to U.S. students while attending a foreign institution. Therefore, the Secretary believes that it is unnecessary for foreign institutions to disclose rules and policies that are not applicable to the institution and its students and that may be incompatible with the laws of the country in which the institution is located.

School and Program Accreditation, Approval, or Licensure
(34 CFR 668.43(a)(6))

Requirement: Each institution must make available to prospective and enrolled students--

- Names of associations, agencies, or governmental bodies that accredit, approve, or license the institution and its programs; and
- Procedures for obtaining or reviewing documents describing accreditation, approval, or licensing.

Reason: Unlike domestic institutions, foreign institutions do not need to be accredited by a body recognized by the Secretary to participate in the title IV, HEA programs. In addition, the requirements for licensing institutions vary by country. Although the foreign institution must have approval of the government of the country in which the institution is located to operate in order to participate

in the title IV, HEA programs, the Secretary does not believe accreditation and licensure information, as described for U.S. Institutions will be available at all foreign institutions.

Drug and Alcohol Abuse Prevention Program (34 CFR 86.100 and 86.103; 20 U.S.C. 1011i)

Requirement: Each institution must annually distribute in writing to each student and employee--

- Standards of conduct that clearly prohibit the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on the institution's property or as part of any of the institution's activities;
- A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;
- A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;
- A description of available counseling, treatment, rehabilitation, or re-entry programs; and

- A clear statement that the institution will impose disciplinary sanctions for violation of the standards of conduct and a description of those sanctions.

In addition, each institution must make available, upon request, to the Department and to the public, the information distributed to students and employees and the results of a biennial review of the institution's program to--

- Determine the effectiveness of the program and implement needed changes;
- Determine the number of drug and alcohol-related violations and fatalities that occur on the institution's campus or as part of the institution's activities, and are reported to campus officials;
- Determine the number and type of sanctions that are imposed by the institution; and
- Ensure that sanctions are consistently enforced.

Reason: U.S. drug laws do not apply in foreign countries and the rules and penalties mentioned in this provision would not apply to U.S. students while they are attending a foreign institution. Therefore, the Secretary believes that it is unnecessary for foreign institutions to disclose rules and policies that are not applicable to the

institution and its students and that may be incompatible with the laws of the country in which the institution is located.

Completion/Graduation and Transfer-out Rates for Students Receiving Athletically Related Student Aid (34 CFR 668.41(f) and 668.48)

Requirement: Each institution must produce by July 1 each year a report that will be provided to a prospective student athlete and the student's parents, high school guidance counselor, and coach at the time the institution offers athletically related student aid.

Reason: The college athletics structure in the United States is unique. As a rule, foreign institutions do not have competitive intercollegiate sports programs for which they offer full or partial athletic scholarships. In those countries where athletic scholarships are available, they exist on a far more limited scale than is the case in the United States. Because of this, the Secretary believes that it is unreasonable to hold foreign institutions to the same standards as American institutions given the differences between our systems.

Intercollegiate Athletic Program Participation Rates and Financial Support (Equity in Athletics Disclosure Act) (34 CFR 668.41(g) and 668.47(c))

Requirement: The Equity in Athletics Disclosure Act (EADA) is intended to provide prospective students information about an institution's efforts to provide equitable athletic opportunities for its men and women students. Any coeducational institution of higher education that participates in a title IV, HEA program and has an intercollegiate athletic program must prepare an annual EADA report. The report includes participation rates, financial support, and other information on men's and women's intercollegiate athletic programs. Institutions must also submit their EADA report to the Department.

Reason: The college athletics structure in the United States is unique. Foreign institutions do not generally have significant numbers of U.S. students participating in competitive intercollegiate sports programs for whom this information would be relevant. Moreover, we are not aware of other countries that require compilation of this or similar information for disclosure to students. Because of this, the Secretary believes that it is unreasonable to hold foreign institutions to the same standards as American institutions given the differences between our systems.

Completion/Graduation and Transfer-out Rates (Including Disaggregated Completion/Graduation Rates) (34 CFR 668.41(d) and 668.45)

Requirement: Each institution must annually make available to prospective and enrolled students the completion or graduation rate of certificate- or degree-seeking, first-time, full-time, undergraduate students. The data are to be available by July 1 each year for the most recent cohort that has had 150 percent of normal time for completion by August 31 of the prior year.

If the information is requested by a prospective student, it must be made available prior to the student's enrolling or entering into any financial obligation with the institution. The disaggregated rates have to be disclosed only if the number of students in each group is sufficient to yield statistically reliable information and not reveal personally identifiable information about an individual student.

Reason: The Secretary is aware that the laws of other countries may not allow for data to be disaggregated in the way required by these regulations. This situation could make the disclosure both inconsistent with the laws of those countries and unhelpful for American students.

Placement in Employment (34 CFR 668.41(d))

Requirement: Institutions must make available to current and prospective students information regarding the placement in employment of, and types of employment

obtained by, graduates of the institution's degree or certificate programs. Under this provision, institutions are not required to calculate placement rates, but an institution must disclose any placement rates it calculates for the school or any program.

Reason: This information is not likely to be helpful to American students studying in foreign institutions, most of whom eventually return to the United States, because it would be based on the placement of students from the institution who work in the institution's host country where conditions for employment may be different.

Job Placement Rates (34 CFR 668.14(b)(10))

Requirement: An institution that advertises job placement rates as a means of recruiting students to enroll must make available to prospective students, at or before the time the prospective student applies for enrollment--

- The most recent available data concerning employment statistics and graduation statistics;
- Any other information necessary to substantiate the truthfulness of the advertisements; and
- Relevant State licensing requirements of the State in which the institution is located for any job for which

the course of instruction is designed to prepare students.

Reason: Because American students studying in foreign schools may eventually return to the United States and may not be permitted to work in a foreign country, this information is not likely to be helpful to those students since most of the students in the school are likely to work in the host country where conditions for employment may be different. In addition, the Secretary believes that it is unreasonable to require foreign institutions to track international placements. Moreover, foreign institutions of higher education are not located in a State for which they could provide information on licensing requirements.

Types of Graduate and Professional Education in Which the Institution's Graduates Enroll (34 CFR 668.41(d)(6))

Requirement: Institutions must make available to current and prospective students information regarding the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll.

Institutions must identify the source of the information, and any timeframes and methodology associated with it.

Reason: This information is not likely to be helpful to American students studying in foreign institutions, most of whom eventually return to the United States, because most

of the students included in the institution's report would be likely to pursue graduate school in the institution's host country where conditions may be different.

Retention Rate (34 CFR 668.41(d)(3))

Requirement: Institutions must make available to current and prospective students the retention rate of certificate or degree seeking, first-time, undergraduate students as reported to the Integrated Postsecondary Education Data System (IPEDS).

Reason: This requirement specifically refers to the retention rate reported to IPEDS. Foreign institutions do not submit information to IPEDS and are not otherwise required to calculate or disclose a retention rate.

Security Report--Missing Person Notification Policy (34 CFR 668.46(b)(14) and 668.46(h))

Requirement: An institution that provides any on-campus student housing facility must include in its annual security report a statement of policy regarding missing student notification procedures for students who reside in on-campus housing.

Reason: This requirement is implemented and administered in connection with the Clery Act, from which Congress specifically exempted foreign institutions. As a result,

the Secretary believes requiring foreign institutions to comply with this requirement is inappropriate.

Fire Safety Report (34 CFR 668.41(e) and 668.49)

Requirement: By October 1 of each year, an institution that maintains any on-campus student housing facility must distribute an annual fire safety report, or provide a notice of the report, to all enrolled students and current employees.

Reason: This provision is implemented and administered in connection with the Clery Act, from which Congress specifically exempted foreign institutions. As a result, the Secretary believes requiring foreign institutions to comply with this requirement is inappropriate.

Fire Log (34 CFR 668.49(d))

Requirement: An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. This log must include the nature, date, time, and general location of each fire.

Reason: This requirement is implemented and administered in connection with the Clery Act, from which Congress specifically exempted foreign institutions. As a result,

the Secretary believes requiring foreign institutions to comply with this requirement is inappropriate.

State Grant Assistance (34 CFR 668.14(b)(11))

Requirement: Institutions must inform all eligible borrowers enrolled in the institution about the availability of and their eligibility for grant assistance from the State in which the institution is located, and provide sources of information about grant assistance from other States to borrowers from other States.

Reason: This requirement is inapplicable to foreign institutions because this requirement applied exclusively to student borrowers with Federal Family Education Loan (FFEL) program loans. No new FFEL loans have been made since July 1, 2010, and it is highly unlikely that current students at foreign institutions have FFEL loans.

II. NON-REGULATORY CONSUMER INFORMATION REQUIREMENTS

INAPPLICABLE TO FOREIGN INSTITUTIONS OF HIGHER EDUCATION

Notice of Federal Student Financial Aid Penalties for Drug Law Violations (20 U.S.C. 1092(k))

Requirement: Each institution must provide to every student upon enrollment a separate, clear, and conspicuous written notice with information on the penalties associated with drug-related offenses under section 484(r) of the HEA.

Institutions must also timely notify each student who has lost eligibility for any grant, loan, or work-study assistance as a result of penalties under section 484(r) (1) of the HEA of the loss of eligibility and the ways in which to regain eligibility under section 484(r) (2) of the HEA.

Reason: U.S. drug laws do not apply in foreign countries and the rules and penalties mentioned in this provision would not apply to U.S. students while they are attending a foreign institution. Therefore, the Secretary believes that it is unnecessary for foreign institutions to disclose rules and policies that are not applicable to the institution and its students and that may be incompatible with the laws of the country in which the institution is located.

Vaccinations Policy (20 U.S.C. 1092(a)(1))

Requirement: Institutions must make available to current and prospective students information about institutional policies regarding vaccinations.

Reason: These requirements were created to address specific public health issues in the United States. Any U.S. students seeking to study at a foreign institution must comply with requirements for entry into the institution's home country, including those related to vaccinations. As a result, the Secretary believes that it

is inappropriate to apply vaccination requirements in the HEA to foreign institutions.

Student Body Diversity (20 U.S.C. 1092(a)(1)(Q))

Requirement: Institutions must make available to current and prospective students information about student body diversity, including the percentage of enrolled, full-time students in the following categories:

- Male.
- Female.
- Self-identified members of a major racial or ethnic group.
- Federal Pell Grant recipients.

Reason: Foreign institutions are not eligible to participate in the Pell Grant Program. Further, the racial and ethnic groups used for this disclosure are defined in IPEDS, a system that foreign institutions do not use, and other countries may have different definitions and reporting laws regarding gender, racial, and ethnic groups. For these reasons, the Secretary believes it is impractical for foreign institutions to comply with this requirement.

Textbook Information (20 U.S.C. 1015b)

Requirement: To the maximum extent practicable, and in a manner of the institution's choosing, each institution must

disclose on its internet course schedule used for preregistration and registration purposes, the International Standard Book Number (ISBN) and retail price information of required and recommended textbooks and supplemental materials for each course listed. If the ISBN is not available, the institution must include in the internet course schedule the author, title, publisher, and copyright date for the textbook or supplemental material.

If a college bookstore is operated by or affiliated with the institution, the institution must make available as soon as practicable the most accurate information available regarding--

- The institution's course schedule for the subsequent academic period;
- The information provided for students regarding the required and recommended textbooks and supplemental materials for each course or class; and
- The number of students enrolled in each course or class and the maximum student enrollment for each course or class.

Reason: The textbook requirements were created to address concerns specific to the United States involving the price of textbooks. These concerns are less apparent at foreign

institutions. English language programs offered by foreign institutions generally use the international editions of texts, which are usually available for purchase at prices far below those of American editions.¹ Accordingly, the Secretary is exempting foreign institutions from these requirements.

Accountability for Programs that Prepare Teachers (20 U.S.C. 1022d-1022g)

Requirement: Each institution that provides a teacher preparation program and admits students receiving Federal student financial aid must provide a report annually to the State and to the general public. The States must submit to the Department, and make available to the public, an annual report containing institutional and State-level information. The Department makes the State reports available to the public.

Reason: Foreign institutions are not located in a State and are not required to prepare or submit this report.

Voter Registration Forms (20 U.S.C. 1094(a)(23))

Requirement: Each institution must--

¹ Lewin, Tamar. (2003, October 21). Students Find \$100 Textbooks Cost \$50, Purchased Overseas. *The New York Times*, Retrieved from <https://www.nytimes.com/2003/10/21/us/students-find-100-textbooks-cost-50-purchased-overseas.html>

- Make a good faith effort to distribute a mail voter registration form to each student enrolled in a degree or certificate program and physically in attendance at the institution;
- Make the voter registration form widely available to students; and
- Request the forms from the State 120 days prior to the deadline for registering to vote within the State.

Reason: Because foreign institutions are not in a State, this requirement does not apply.

Constitution Day (36 U.S.C. 106)

Requirement: Constitution Day is September 17 of each year, commemorating the September 17, 1787 signing of the U.S. Constitution. Institutions that receive Federal funds are required to hold an appropriate educational program about the Constitution for their students.

Reason: The Secretary believes that it is inappropriate to require institutions located outside the U.S. to conduct an educational program on another nation's Constitution.

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Betsy DeVos,
Secretary of Education.

